IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22953 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAHURBHAI HABIBBHAI SHAIKH - Petitioner(s)

Versus

DISTRICT MAGISTRATE & 3 - Respondent(s)

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Appearance :

MR KR RAVAL for Petitioner(s) : 1
M IA SHAIKH for Respondent(s) : 3
MR LR POOJARI, AGP for Respondent(s) :1, 2, 4

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 03/02/2006

ORAL JUDGMENT

1. Jahurbhai Habibbhai Shaikh, petitioner, has filed this petition under Article 226 of the Constitution of India with a prayer that this Court may issue an appropriate writ, order or direction for

quashing and setting aside the order of detention dated 10.10.2005, passed by the District Magistrate, Ahmedabad - respondent No.1 detaining authority under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as “PBM Act”) as being illegal, invalid, null and void, suffers from total non-application of mind and violative of Articles 21, 22 & 226 of the Constitution of India. The petition was filed on 21st November, 2005. Along with the order the authority has also supplied the grounds in this behalf.

2. When the matter was placed for hearing before this Court on 28.11.2005 this Court has issued Rule and the same was made returnable on 19.12.2005.

3. Pursuant to the same, Mr.L.R.Poojari, learned AGP appears on behalf of the respondents No.1, 2 & 4 and Mr.M.I.A.Shaikh, learned Standing Counsel appears on behalf of respondent No.3 - Union of India.

4. At that time as the Central Government did not file affidavit and learned Counsel on behalf of the Union of India prayed for time and therefore the matter was adjourned from time to time and ultimately on 31st

January, 2006, Mr.Jitendra Malkan, learned Asst.Solicitor General of India Senior Counsel on behalf of Union of India requests the Court to keep the matter on 2.2.2006 so as to enable him to obtain necessary instructions in this behalf.

5. From the record it appears that the order of detention is passed by the District Magistrate, Ahmedabad, on 10.10.2005 and the District Magistrate has forwarded his report forthwith under Section 3(3) of the PBM Act. From the record it appears that the order of detention dated 10.10.2005 is approved by the State Government on 21.10.2005 i.e., within the stipulated period of 12 days as per the provisions in sub-section (3) of Section 3 of the PBM Act. The detenu was actually detained on 7.11.2005. From the record it appears that the State Government has reported the facts to the Central Government together with the grounds and such other particulars which bearing on the necessity for the order by speed post letter dated 21.10.2005. Thereafter the representation was received in the Special Branch of Food, Civil Supplies & Consumer Affairs Department on 21.11.2005. The file was prepared by Special Branch on the same day i.e. 21.11.2005 and thereafter file was placed before the

Section Officer and Deputy Secretary on 21.11.2005. It was further stated that both the above officers cleared the said file of representation on the same day i.e., on 21.11.2005. Thereafter the file was placed before the Hon'ble Minister of Civil Supplies on 22.11.2005, who decided to reject the representation on the same day i.e., on 22.11.2005 and the file was received back on 23.11.2005. The detenu was informed about the rejection of the representation by a letter dated 23.11.2005 through jail authority. Though it is not in the affidavit but Mr.L.R.Poojari, learned AGP on instructions from the Officer and from the file states that the first representation made by the brother of the detenu on 18.11.2005 which was received by the detaining authority on the same day. It was stated that the detaining authority has forwarded the said representation along with their letter dated 19.11.2005 to the Central Government as per compliance of the provisions of the Act. However, whether the Central Government has considered the same or whether they have approved or rejected because this Court is not able to decide as the Central Government has not filed affidavit though this Court has given enough time to the Central Government to file the affidavit or to obtain instructions in this behalf. At this stage,

Mr.M.I.A.Shaikh, learned Central Government Counsel has stated that he has telephonically try to contact the concerned Secretary on phone today two times and he has also addressed a letter dated 2.2.2006 by Fax to the Under Secretary, Department of Consumers Affairs, Ministry of Food and Public Distribution, New Delhi with a request that he has not received any affidavit-in-reply or any instruction from the department and the department was requested to inform him immediately whether any representation received from the petitioner or it has been decided. It was also stated that in the said letter that the matter was kept on 3.2.2006 and the office has to instruct him failing which matter will be decided ex-parte.

6. In spite of the aforesaid letter addressed by the learned Counsel for the Central Government, the Central Government has not informed the learned Counsel anything in this behalf. So in absence of any affidavit of the Central Government or any instruction from the Central Government, this Court has no alternative but to allow this petition only on the ground that the representation made by the detenu dated 18.11.2005 has not been considered by the Central Government in this behalf and therefore the order of

detention is bad in law and liable to be quashed and set aside.

7. For the foregoing reasons, the petition is allowed. The impugned order dated 10.10.2005 passed by the respondent No.1 authority is quashed and set aside. The detenu-Jahurbhai Habibbhai Shaikh is ordered to be set at liberty forthwith unless required in any other case. Rule is made absolute. Direct service is permitted.

(K.M. Mehta, J.)

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